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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/823,081	03/29/2001	Robert Alan Eustace	9772-0275-999	6988

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EXAMINER

DETWILER, BRIAN J

ART UNIT	PAPER NUMBER
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2173

DATE MAILED: 03/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/823,081

Applicant(s)

EUSTACE, ROBERT ALAN

Examiner

Brian J Detwiler

Art Unit

2173

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-64 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 25-38 and 59-64 is/are rejected.
- 7) ☒ Claim(s) 5-24, 33, 34, 39-58 and 63 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____  | 6) <input type="checkbox"/> Other: ____                                     |

## DETAILED ACTION

### *Claim Objections*

Claims 5 and 39 are objected to because in lines 4 and 5, it is unclear whether the amount of time that lapses is between the selecting of two items or a selecting of one item and an item itself. Since the latter choice does not make sense, the examiner assumes that Applicant intended to claim "ascertain an amount of time that lapses between a selection of the first selected item of media and **a selection of a second selected item of media**". Appropriate correction is required.

Claims 33 and 63 are objected to because words are missing from a portion of line 3: "probability of a being selected". In order to expedite prosecution, the examiner assumes that Applicant intended to claim, "probability of **an item of said media** being selected". Appropriate correction is required.

Claim 34 is objected to because line 6 should begin with "**said media related data** indicating" instead of "said media indicating". Appropriate correction is required.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 2173

Claims 1, 4, 25, 28-38, 59, and 62-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,662,231 (Drosset et al) and U.S. Patent No. 6,574,616 (Saghir).

Referring to claims 1 and 37, Drosset discloses in column 3: lines 21-33 that MP3 readers, personal computers, PDAs, laptops, and cell phones can serve as client devices in the invention. Media is streamed to the client devices from a storage unit located in a remote server as explained in column 5: lines 40-55. In addition to the actual media, Drosset explains in this section that the storage unit further comprises media related data like the Audio File Table of Figure 4. Said storage unit and the accompanying data can thus be considered part of a single media player that includes one of the client devices mentioned above. In column 5: lines 40-55 Drosset further discloses media selection logic, which selects an item of media by referencing the media related data stored in the Audio File Table and then updates the data in accordance with the selection. In column 5: lines 66-67 and column 6: line 1, Drosset explains that Microsoft Media Services, Quicktime, and RealPlayer can act as media player interfaces to said media player. Drosset, however, fails to disclose that the media related data includes a selection probability for each item of media. Saghir, though, teaches an image query and retrieval system comprising a plurality of selection probability functions that aid a user in finding desired images (see abstract). In column 3: lines 41-67 Saghir discloses that each image (media item) has associated therewith an image profile (media related data). Said image profile comprises "a plurality of characteristic functions, each of which represents a probability distribution function which describes the probability of an image being selected given user preferences" (column 3: lines 61-64). In column 3: lines 13-21, Saghir explains that the invention allows users to

Art Unit: 2173

efficiently search for and retrieve images by presenting images for selection that are likely to be desirable to the user. Saghir's method of search and retrieval is of particular relevance to Drosset's media player. Users of Drosset's invention can only find desirable audio files by keyword searching or instructing the system to suggest audio files that are similar to ones they have recently listened too. Drosset is silent as to how a user would find music of interest for which the name of an artist, album, or song title is not known and the type or genre of music differs from that which was most recently heard. Converting Saghir's method to one involving audio files instead of images would be particularly simple since music is already categorized according to a variety of characteristics. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include Saghir's method of search and retrieval in the invention of Drosset. The combination would advantageously allow users to efficiently find and listen to music that is likely to be desirable to them as suggested by Saghir.

Referring to claims 4 and 38, Drosset discloses in column 6: lines 11-43 media selection logic that is configured to select an item of media in response to a lapse of time not less than a duration associated with a previously selected item of media. More specifically, Drosset discloses playlist logic that instructs the media player to select and play out a series of audio files. Each selected audio file is inherently associated with a duration of time equal to the playing length of the audio file. After that duration of time has elapsed, and the selected audio file has finished playing, a new audio file is selected and played out. In such a case, the new audio file is selected in response to a lapse of time that is not less than the playing time of the previous audio file.

Referring to claims 25 and 59, Drosset discloses in column 6: lines 60-67 that users can create, modify, or delete playlists. Accordingly, users can establish a preferred media list and then later enable the media selection logic to select and play out items from the list as explained above.

Referring to claims 28-31, Drosset discloses in column 2: lines 38-59 that the media items are musical compositions. Neither Drosset nor Saghir discloses that the media items can be radio stations, television stations, or movies. It is notoriously well known in the state of the art that radio stations, television stations, and movies are types of media that are commonly selected via graphical user interfaces. The examiner takes OFFICIAL NOTICE of this teaching. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute radio stations, television stations, or movies for the musical compositions used in the Drosset's invention. It would have been advantageous to do this because users commonly desire efficient means for selecting and playing all types of media.

Referring to claims 32 and 62, Drosset discloses in column 7: lines 20-29 that the media selection logic can be configured to initially select from predetermined lists of media.

Referring to claims 33 and 63, Drosset explains in column 18: lines 39-44 that media selection logic enables an operator to delete an item of media. When media items are no longer popular, or their probability of being selected falls below a predetermined threshold, it is well known for said items to be deleted to make room for new items.

Referring to claims 34 and 35, Drosset illustrates in Figure 1 a plurality of client devices connected to a remote server via a public IP network. Said client devices and said remote server must then inherently comprise communication ports configured to transfer media and media

related data. In the hypothetical invention of Drosset and Saghir, the probability of selection for each item of media would be transferred via said communication ports. In column 9: lines 24-45, Drosset explains that suggestions or additional media items can be transferred based upon media related data.

Referring to claims 36 and 64, Drosset discloses in column 8: lines 40-48 that media selection logic is configured to store a list of recently selected items of media. Drosset further explains in column 8: lines 57-61 that the selection logic uses the list to select items of media that have not been previously selected.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,662,231 (Drosset et al) and U.S. Patent No. 6,574,616 (Saghir) as applied to claim 1 above, and further in view of U.S. Patent No. 5,616,876 (Cluts).

Referring to claims 2 and 3, neither Drosset nor Saghir discloses a media player interface disposed on a unit separate from the media player. Cluts, though, illustrates in Figure 3 a remote control that serves as an interface to a media player operating on a separate unit. In Cluts' invention, the remote control operates the set top terminal of Figure 2. Remote controls commonly provide interfaces for media devices with limited user input capabilities. It therefore would have been obvious to one of ordinary skill in the art at the time the invention was made to use a remote control as taught by Cluts to operate the media player in the hypothetical invention of Drosset and Saghir because remote controls provide simple and intuitive means for operating devices with limited user input.

Claims 26 and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,662,231 (Drosset et al) and U.S. Patent No. 6,574,616 (Saghir) as applied to claims 1 and 37 above, and further in view of U.S. Patent No. 4,611,996 (Stoner).

Referring to claims 26 and 60, neither Drosset nor Saghir discloses the claimed random selection algorithm. Stoner, though, discloses in column 1: lines 67-68 and column 2: lines 1-19 a random selection algorithm in which a probability is assigned to each of a plurality of items. To select an item, a random number is generated that falls between two values, wherein the difference of the two values is equal to the sum of the probabilities. The algorithm then systematically goes through the items and adds the probability of each item to a sum initialized to the first value. An item is selected when the sum of the probabilities exceeds the random number. Stoner's random selection algorithm is well known and can be used in any implementation involving a random selection of items, wherein each item has its own selection probability. It thus would have been obvious to one of ordinary skill in the art at the time the invention was made to include Stoner's random selection algorithm in the hypothetical invention of Drosset and Saghir. Stoner's random selection method provides an advantageous means for presenting a user with items that are likely to be selected by the user because items with a higher probability of being selected are presented more often than items with a lower probability of being selected as explained by Stoner in column 2: lines 15-19.

Claims 27 and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,662,231 (Drosset et al) and U.S. Patent No. 6,574,616 (Saghir) as applied to claims 1 and 37 above, and further in view of U.S. Patent No. 5,633,985 (Severson et al).



Art Unit: 2173

Referring to claims 27 and 61, neither Drosset nor Saghir discloses a random selection method that utilizes a probability density function. Severson, though, discloses in column 2: lines 59-67 and column 3: lines 1-9 a method of randomly selecting audio items in which each audio item is assigned to a portion of a probability density function, selecting a portion of the probability density function, and playing the corresponding audio item. Severson's method is another well known random selection mechanism that can be used in implementations where some items are to have a greater probability of being selected than other items as explained by Severson in column 3: lines 1-9. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include Severson's random selection method in the hypothetical invention of Drosset and Saghir. Severson's random selection method provides an advantageous means for selecting audio items with higher probabilities than selecting items with lower probabilities as mentioned above.

*Allowable Subject Matter*

Claims 5-24 and 39-58 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: In combination with the claimed subject matter, the prior art does not teach or fairly suggest ascertaining an amount of time that lapses between first and second selections of media and then adjusting the selection probability of the first item by reference to a ratio of said amount of time that lapses. The closest prior art, U.S. Patent No. 6,574,616 (Saghir), teaches adjusting the

Art Unit: 2173

likelihood of selecting a particular item in response to the selection of other items with no regard to time constraints.

*Conclusion*

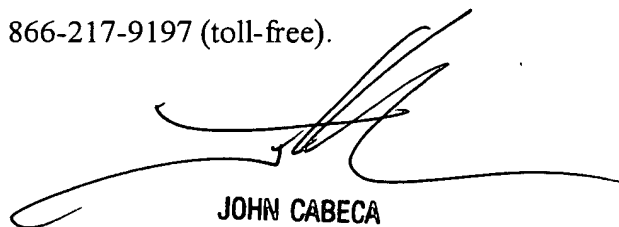
The prior art made of record on form PTO-892 and not relied upon is considered pertinent to applicant's disclosure. Applicant is required under 37 C.F.R. § 1.111(c) to consider these references fully when responding to this action. The documents cited therein teach alternative media selection interfaces and methods for automatically recommending or selecting items for users.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian J Detwiler whose telephone number is 703-305-3986. The examiner can normally be reached on Mon-Thu 8-5:30 and alternating Fridays 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W Cabeca can be reached on 703-308-3116. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

bjd



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